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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Federal State Joint Board
Universal Service

CC Docket No. 96-45

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To: The Commission

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**REGULATORY FLEXIBILITY ACT REPLY COMMENTS
OF THE
SMALL CABLE BUSINESS ASSOCIATION**

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January 10, 1997

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I. NECESSITY OF A FINAL REGULATORY FLEXIBILITY ACT ANALYSIS

In *Notice of Proposed Rulemaking and Order Establishing Joint Board*, CC Docket No. 96-45, FCC 96-93 (released March 8, 1996) ("*Notice*"), the Commission referred the issues raised in the *Notice* to the Federal-State Joint Board for the preparation of a *Recommended Decision*. As required by the Regulatory Flexibility Act,¹ the Commission provided within the *Notice* its Initial Regulatory Flexibility Act ("IRFA") analysis. The universal service issues raised in the *Notice* have since been addressed the by Joint Board in its *Recommended Decision*.² SCBA has filed separate reply comments which detail the impact of the *Recommended Decision* upon small cable companies and the ultimate beneficiaries of universal service, small schools and their students, libraries and health organizations.

Although the Joint Board has recommended a structure for implementing §254(h) that begins to address the role small cable television and other telecommunications providers will play in providing advanced telecommunications services to small schools and libraries, the Joint Board did not engage in an independent Regulatory Flexibility Act analysis. The responsibility for preparing a Final Regulatory Flexibility Act ("FRFA") analysis falls upon the Commission.³ SCBA's reply comments propose clarifications, modifications and other significant alternatives designed to minimize the impact of the *Recommended Decision* on small cable. These reply comments must factor into the Commission's preparation of its FRFA analysis.

¹ 5 U.S.C. §§ 601-602.

² In the Matter of the Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (released November 8, 1996).

³ 5 U.S.C. § 604(a).

II. THE RECOMMENDED DECISION LAYS A FOUNDATION

In its IRFA, the Commission acknowledged the need to both reduce the cost of compliance⁴ and avoid significant economic impact⁵ upon small providers. The *Recommended Decision* begins to outline the impact of universal service funding mechanism on small cable and other small telecommunications providers. On balance, the proposed structure enhances, rather than restricts competition.

SCBA's reply comments respond to the comments of ILECs which seek to impede expansion in competition and maintain monopoly power in markets for educational and health care related telecommunications. The retention of monopoly power by the ILECs would impact most harshly on rural areas where small cable often represents the most likely source of competition. The Commission must not allow this result and must address these issues as part of its FRFA.

SCBA has provided specific recommendations in its reply comments regarding two issues essential to the ability of small cable to effectively participate in the provision of advanced telecommunications services to schools, libraries and health organizations:

- Structuring the competitive bidding process for educational telecommunications to minimize the ILECS' ability to cross-subsidize and obtain unfair advantages in the bidding process.
- Facilitating the expansion and fair allocation of USF with respect to existing agreements between schools and libraries and small cable operators that may qualify for USF support.

⁴ Notice, ¶ 139.

⁵ Notice, ¶ 142.

SCBA also seeks express confirmation that certain provisions of the *Recommended Decision* will permit small businesses to more effectively participate in the competitive provision of services partially subsidized with universal service funds.

III. MANY SMALL CABLE ENTITIES IMPACTED

Many small cable providers either already provide or seek to provide advanced telecommunications services to educational and health care providers. The Commission has already separately investigated and determined the large number of small systems that provide service to rural America⁶ and their unique financial attributes. The vast majority of these systems will be harmed if the Commission's final order fails to minimize burdens and maintain a level playing field for small cable.

⁶ See, *Sixth Report and Order and 11th Order on Reconsideration*, MM Docket Nos. 92-266 and 93-215 (released June 5, 1995).

IV. CONCLUSION

The *Recommended* Decision constitutes a good starting point to craft regulations that will provide small cable with a meaningful opportunity to compete for the provision of advanced telephony services to educational and health care providers. The Commission must, however, fulfill its independent responsibilities under the Regulatory Flexibility Act as it completes this rulemaking.

Respectfully submitted,



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